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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,088	10/22/1999	HIMANSHU S. SINHA	99-829	9057

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EXAMINER

BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
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2142

15

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PLG

Office Action Summary

Application No.

09/425,088

Applicant(s)

SINHA, HIMANSHU S.

Examiner

Douglas B Blair

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Claims 1-5 and 7-17 are currently pending in this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-10, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,243,396 to Somers in view of U.S. Patent Number 6,272,110 to Tunncliffe et al..
4. These rejections are the same as those presented in the previous office action (Paper No. 13).
5. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,243,396 to Somers in view of U.S. Patent Number 6,272,110 to Tunncliffe et al. as applied to claims 8 and 12, respectively, above, and further in view of U.S. Patent Number 6,446,200 to Ball et al..
6. These rejections are the same as those presented in the previous office action (Paper No. 13).
7. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,243,396 to Somers in view of U.S. Patent Number 6,272,110 to Tunncliffe et

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al. as applied to claim 8 above, and further in view of U.S. Patent Number 6,117,188 to Aronberg et al. and U.S. Patent Number 6,442,608 to Knight et al..

8. These rejections are the same as those presented in the previous office action (Paper No. 13).

Response to Arguments

9. Applicant's arguments filed 12/11/2003 have been fully considered but they are not persuasive. The applicant argues the following points: (a) Turnicliffe may disclose that a network operator may predict short term demand on the network and make various adjustments based on the amount of demand however Turnicliffe does not disclose modifying an estimated capacity of the service provider based on the measured performance; b) Knight and Aronberg are directed to different environments and the applicant maintains that it would not have been obvious to combine features from these disparate environments without the benefit of the applicant's disclosure; c) there is not proper motivation for combining the teachings of Somers-Turnicliffe with the teachings of Knight-Aronberg; d) Aronberg does not disclose determining whether to accept a request based on the number of tokens associated with a client process; e) Assigning sessions to an entity, such as a company, is not equivalent to assigning session to each of a plurality of client processes; f) Knight does not disclose deducting a number of sessions from the client process if the request is accepted; and g) Aronberg does not disclose deducting a number of tokens from the first client process when a request from the first client process is accepted.

10. As to point (a), the prediction of short-term demand is considered a modification of estimated capacity based on measured performance. There is nothing in the claim language that

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states that the performance measurement module is not in communication with an operator nor is there any claim language that states that the estimated capacity is not short-term.

11. As to point (b), Knight and Aronberg are both directed towards systems for limiting the access to a resource to a particular entity therefore they solve the same problem in different manners. Systems limiting access to resources and using tokens were common at the time of the applicant's invention. Knight and Aronberg are two examples of such systems. Therefore one of ordinary skill in the Computer Networking art at the time of the applicant's invention would not have needed the applicant's disclosure to make such a discovery.

12. As to point (c), the background of the Knight reference supports the motivation previously provided (see Knight, col. 2, lines 3-35).

13. As to point (d), in Aronberg if the client process does not have at least one token associated with it then the server does not accept the request. The claim language says nothing about maximum number of tokens.

14. As to point (e), in the context of limiting the access to a resource to a particular entity a client process can be considered an entity.

15. As to point (f), in Knight if a session is accepted then the counter is incremented thus the number of available sessions is deducted.

16. As to point (g), if the process is accepted then the token is returned therefore the number of tokens possessed by the client is deducted.

Conclusion

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17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 703-305-9705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3800.


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER

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Douglas Blair

January 21, 2004

DBB